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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. SAN JOSE

7 ADR

8
9 *U HRL*
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 MICHAEL HOLBROOK,
13 Plaintiff,

14 vs.

15 ACE HARDWARE CORPORATION;
16 DOLLAR TREE STORES, INC. and
17 R.J. DYER REAL PROPERTY
18 INVESTMENTS CORPORATION,

19 Defendants.

C V }

No. 10-05255
Plaintiff's Complaint

HRL

20 I. SUMMARY

21 1. This is a civil rights action by plaintiff MICHAEL HOLBROOK
22 ("Holbrook") for discrimination at the building, structure, facility,
23 complex, property, land, development, and/or surrounding business
24 complex known as:

25 Common Areas

1220-1360 First Street

San Jose, CA 95116

(hereinafter "Gilroy Shopping Center Common Area")

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Plaintiff's Complaint

1 Ace Hardware of Gilroy
2 1260 First Street
3 Gilroy, CA 95020
4 San Jose, CA 95116
(hereinafter "Ace Hardware Facility")

5 Dollar Tree Store, Inc.
6 1260 1st Street
7 Gilroy, CA 95020
(hereinafter "Dollar Tree Store Facility")

8
9 2. Pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§
10 12101 et seq.), and related California statutes, HOLBROOK seeks
11 damages, injunctive and declaratory relief, attorney fees and costs,
12 against:

- 13 a) R.J. DYER REAL PROPERTY INVESTMENTS
14 CORPORATION, (hereafter the "Gilroy Shopping Center Common
15 Area Defendant");
16 b) ACE HARDWARE CORPORATION (hereafter the "Ace Hardware
17 Defendant");
18 c) DOLLAR TREE STORES, INC. (hereafter the "Dollar Tree Store"
19 Defendant").

20 II. JURISDICTION

- 21 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343
22 for ADA claims.
23 4. Supplemental jurisdiction for claims brought under parallel California
24 law – arising from the same nucleus of operative facts – is predicated
25 on 28 U.S.C. § 1367.
26 5. Holbrook's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

27 III. VENUE

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1 6. All actions complained of herein take place within the jurisdiction of
2 the United States District Court, Northern District of California, and
3 venue is invoked pursuant to 28 U.S.C. § 1391(b),(c).

4 IV. PARTIES

5 7. The Gilroy Shopping Center Common Area Defendant owns, operates,
6 manages, and/or leases the Gilroy Shopping Center Common Area,
7 and consists of a person (or persons), firm, and/or corporation.

8 8. The Ace Hardware Defendant owns, operates, manages and/or leases
9 the Ace Hardware Facility, and consists of a person (persons), firm,
10 and/or corporation.

11 9. The Dollar Tree Store Defendant owns, operates, manages and/or
12 leases the Dollar Tree Store Facility, and consists of a person
13 (persons), firm, and/or corporation.

14 10. Holbrook is quadriplegic and requires use of a wheelchair when
15 traveling about in public. Consequently, Holbrook is physically
16 disabled as defined by all applicable California and United States laws
17 and the member of the public whose rights are protected by these laws.

18 V. FACTS

19 11. The Gilroy Shopping Center Common Area is a sales or retail
20 establishment, open to the public, which is intended for nonresidential
21 use and whose operation affects commerce.

22 12. The Ace Hardware Facility is a sales or retail establishment, open to
23 the public, which is intended for nonresidential use and whose
24 operation affects commerce.

25 13. The Dollar Tree Store Facility is a sales or retail establishment, open to
26 the public, which is intended for nonresidential use and whose
27 operation affects commerce.

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1 14. Holbrook visited these facilities and encountered barriers (both
2 physical and intangible) that interfered with – if not outright denied –
3 his ability to use and enjoy the goods, services, privileges, and
4 accommodations offered at the facility.

5 15. To the extent known by Holbrook, the barriers at the Gilroy Shopping
6 Center Common Area included, but are not limited to, the following:

- 7 a. The phone number or address where towed vehicles can be
8 reclaimed is not posted in the appropriate section on each tow-away
9 sign and is not a permanent part of the sign;
- 10 b. The correct number of standard accessible and van-accessible
11 parking stalls is not provided on the site;
- 12 c. Parking bumper or curb is not provided;
- 13 d. Ramps encroach into accessible parking spaces or access aisles;
- 14 e. Surface of the parking spaces and access aisles exceeds 1:50
15 gradient (2.0%) in any direction;
- 16 f. The access aisle is not placed on the side opposite the driver's side
17 when the vehicle is going forward into the parking space (i.e. the
18 passenger side of the vehicle);
- 19 g. Van accessible parking space does not have an additional sign
20 stating "Van Accessible" mounted below the Symbol of
21 Accessibility;
- 22 h. An additional sign below the symbol of accessibility does not state
23 "Minimum Fine \$250.00";
- 24 i. The words "NO PARKING" are not painted in white on the ground
25 within each access aisle;
- 26 j. Signage containing the International Symbol of Accessibility is not
27 located at every primary public entrance and at every major exterior
28

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1 junction where the accessible route of travel diverges from the
2 regular circulation path along or leading to an accessible route of
3 travel;

- 4 k. The accessible route does not coincide, to the maximum, extent
5 feasible, with the route for general traffic.

6 These barriers prevented Holbrook from enjoying full and equal access at the
7 Gilroy Shopping Center Common Area.

8 16. Holbrook was also deterred from visiting The Gilroy Shopping Center
9 Common Area because he became aware that the goods, services,
10 facilities, privileges, advantages, and accommodations were
11 unavailable to physically disabled patrons (such as himself) at the
12 Gilroy Shopping Center Common Area. He continues to be deterred
13 from visiting the Gilroy Shopping Center Common Area because of
14 the future threats of injury created by these barriers.

15 17. To the extent known by Holbrook, the barriers at the Ace Hardware
16 Facility included, but were not limited to, the following:

- 17 a. The phone numbers or address where towed vehicles can be
18 reclaimed is not posted in the appropriate section on each tow-away
19 sign and is not a permanent part of the sign;
20 b. The phone number or address where towed vehicles can be reclaimed
21 is not posted in the appropriate section on each tow-away sign and is
22 not a permanent part of the sign;
23 c. The correct number of standard accessible and van-accessible parking
24 stalls is not provided on the site;
25 d. Parking bumper or curb is not provided;
26 e. Ramps encroach into accessible parking spaces or access aisles;

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- f. Surface of the parking spaces and access aisles exceeds 1:50 gradient (2.0%) in any direction;
- g. The access aisle is not placed on the side opposite the driver's side when the vehicle is going forward into the parking space (i.e. the passenger side of the vehicle);
- h. Van accessible parking space does not have an additional sign stating "Van Accessible" mounted below the Symbol of Accessibility;
- i. An additional sign below the symbol of accessibility does not state "Minimum Fine \$250.00";
- j. The words "NO PARKING" are not painted in white on the ground within each access aisle; -
- k. Signage containing the International Symbol of Accessibility is not located at every primary public entrance and at every major exterior junction where the accessible route of travel diverges from the regular circulation path along or leading to an accessible route of travel;
- l. The entrance door to a single accommodation toilet room does not contain a privacy latch (push button-lever release recommended);
- m. Aisles with merchandise on one side are not 36" in width or aisles serving both sides are not 44" in width.
- n. Recessed doormats are not adequately anchored to prevent interference with wheelchair traffic;
- o. A clear space of sufficient size to inscribe a 60" diameter circle, or a T-shaped clear space is not provided within the sanitary facility room;
- p. A minimum 60" wide and 48" deep clear floor space is not provided in front of the water closet;
- q. Drain and hot water piping is not insulated or configured to prevent contact;

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- r. There are sharp and abrasive elements under lavatory;
- s. Mirror located above accessible lavatory or countertop is not installed with the bottom edge of the reflective surface 40" minimum above the finish floor or ground;
- t. Operable parts of all fixtures or accessories are not located a maximum of 40" above floor;
- u. Sanitary facilities are not displaying signs in a minimum of two locations; one type located on the doorway to the facility, and another type mounted on the wall adjacent to the latch side of the door.
- v. The International Symbol of Accessibility is not posted at accessible sanitary facilities;
- w. The restroom identification signage is not located on the wall adjacent to the latch side of the door;
- x. There are no truncated domes provided at every connection of accessible route and driveway;
- y. Directional signage to restrooms is not properly posted.

These barriers prevented Holbrook from enjoying full and equal access at the Ace Hardware Facility.

18.Holbrook was also deterred from visiting the Ace Hardware Facility because he became aware that the goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself) at the Ace Hardware Facility. He continues to be deterred from visiting the Ace Hardware Facility because of the future threats of injury created by these barriers.

19.To the extent known by Holbrook, the barriers at the Dollar Tree Store Facility included, but are not limited to, the following:

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- a. The correct number of standard accessible and van-accessible parking stalls is not provided on the site;
- b. Parking spaces are not located on the shortest accessible route of travel from adjacent parking to the accessible entrance;
- c. Parking bumper or curb is not provided to prevent encroachment of cars over the required width of walkways;
- d. Ramps encroach into accessible parking spaces or access aisles;
- e. Surface of the parking spaces and access aisles exceeds 1:50 gradient (2.0%) in any direction;
- f. The access aisle is not placed on the side opposite the driver's side when the vehicle is going forward into the parking space (i.e. the passenger side of the vehicle);
- g. Van accessible parking space does not have an additional sign stating "Van Accessible" mounted below the Symbol of Accessibility;
- h. An additional sign below the symbol of accessibility does not state "Minimum Fine \$250.00";
- i. The words "NO PARKING" are not painted in white on the ground within each access aisle;
- j. The accessible route does not coincide, to the maximum extent feasible, with the route for the general traffic;
- k. Signage containing the International Symbol of Accessibility is not located at every primary public entrance and at every major exterior junction where the accessible route of travel diverges from the regular circulation path along or leading to an accessible route of travel;
- l. The minimum clear width of the accessible route is less than 36";

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- 1 m. Aisles with merchandise on one side are not 36" in width or aisles
- 2 serving both sides are not 44" in width.
- 3 n. Exposed edges of carpet are not fastened to floor surfaces and don't
- 4 have trim along the entire length of the exposed edge;
- 5 o. The centerline of the water closet is located less than 18" distance
- 6 from the side-wall or partition;
- 7 p. The front end of the side grab bar is not located a minimum of 54"
- 8 from the rear wall;
- 9 q. Drain and hot water piping is not insulated or configured correctly to
- 10 prevent contact;
- 11 r. There are sharp and abrasive elements under lavatory;
- 12 s. Mirror is located above accessible lavatory or countertop is not
- 13 installed with the bottom edge of the reflective surface 40"
- 14 minimum above the finish floor or ground;
- 15 t. Coat hooks and shelving are not located within the appropriate reach
- 16 ranges";
- 17 u. Sanitary facilities are not displaying signs in a minimum of two
- 18 locations; one type located on the doorway to the facility, and
- 19 another type mounted on the wall adjacent to the latch side of the
- 20 door;
- 21 v. The proper restroom identification signage is not located on the wall
- 22 adjacent to the latch side of the door;
- 23 w. Accessible toilet facilities are not identified by the International
- 24 Symbol of Accessibility (white figure on a blue ground).
- 25 x. The inside and outside of the compartment door is not equipped with
- 26 a loop or U-shaped handle located immediately below the latch;
- 27
- 28

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- y. There are no truncated domes provided at every connection of accessible route and driveway ;
- z. Directional signage to restrooms is not properly posted;
- aa. There is insufficient clearance provided on the strike side of the restroom.

These barriers prevented Holbrook from enjoying full and equal access at the Dollar Tree Store Facility.

20. Holbrook was also deterred from visiting the Dollar Tree Store Facility because he became aware that the goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself) at the Dollar Tree Store Facility. He continues to be deterred from visiting the Dollar Tree Store Facility because of the future threats of injury created by these barriers.

21. Holbrook also encountered barriers at the various facilities which violate state and federal law, but were unrelated to his disability. Nothing within this complaint, however, should be construed as an allegation that Holbrook is seeking to remove barriers unrelated to his disability.

22. Gilroy Shopping Center Defendant knew that these elements and areas of the Gilroy Shopping Center Common Area were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Gilroy Shopping Center Defendant has the financial resources to remove these barriers from the Gilroy Shopping Center Common Area (without much difficulty or expense), and make the Gilroy Shopping Center Common Area accessible to the physically disabled. To date, however, Gilroy Shopping Center

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1 Common Area Defendant refuses to either remove those barriers or
2 seek an unreasonable hardship exemption to excuse non-compliance.

3 23. At all relevant times, Gilroy Shopping Center Common Area
4 Defendant has possessed and enjoyed sufficient control and authority
5 to modify the Gilroy Shopping Center Common Area to remove
6 impediments to wheelchair access and to comply with the Americans
7 with Disabilities Act Accessibility Guidelines and Title 24 regulations.
8 Gilroy Shopping Center Common Area Defendant has not removed
9 such impediments and has not modified the Gilroy Shopping Center
10 Common Area to conform to accessibility standards. Gilroy Shopping
11 Center Common Area Defendant has intentionally maintained the
12 Gilroy Shopping Center Common Area and in its current condition and
13 has intentionally refrained from altering the Gilroy Shopping Center
14 Common Area so that it complies with the accessibility standards.

15 24. Holbrook further alleges that the (continued) presence of barriers at the
16 Gilroy Shopping Center Common Area is so obvious as to establish
17 Gilroy Shopping Center Common Area Defendant's discriminatory
18 intent.¹ On information and belief, Holbrook avers that evidence of
19 this discriminatory intent includes Gilroy Shopping Center Common
20 Area Defendant's refusal to adhere to relevant building standards;
21 disregard for the building plans and permits issued for The Gilroy
22 Shopping Center Common Area; conscientious decision to the
23 architectural layout (as it currently exists) at the Gilroy Shopping
24 Center Common Area; decision not to remove barriers from the Gilroy
25 Shopping Center Common Area; and allowance that Gilroy Shopping
26 Center Common Area Defendant's property continues to exist in its

27 ¹ E.g., Gunther v. Lin, 144 Cal.App.4th 223, fn.6

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1 non-compliance state. Holbrook further alleges, on information and
2 belief, that the Gilroy Shopping Center Common Area is not in the
3 midst of a remodel, and that the barriers present at the Gilroy Shopping
4 Center Common Area are not isolated (or temporary) interruptions in
5 access due to maintenance or repairs.²

6 25. Ace Hardware Defendant knew that these elements and areas of the
7 Ace Hardware Facility were inaccessible, violate state and federal law,
8 and interfere with (or deny) access to the physically disabled.
9 Moreover, Ace Hardware Defendant has the financial resources to
10 remove these barriers from the Ace Hardware Facility (without much
11 difficulty or expense), and make the Ace Hardware Facility accessible
12 to the physically disabled. To date, however, Ace Hardware
13 Defendant refuses to either remove those barriers or seek an
14 unreasonable hardship exemption to excuse non-compliance.

15 26. At all relevant times, Ace Hardware Defendant has possessed and
16 enjoyed sufficient control and authority to modify the Ace Hardware
17 Facility to remove impediments to wheelchair access and to comply
18 with the Americans with Disabilities Act Accessibility Guidelines and
19 Title 24 regulations. Ace Hardware Defendant has not removed such
20 impediments and has not modified the Ace Hardware Facility to
21 conform to accessibility standards. Ace Hardware Defendant has
22 intentionally maintained the Ace Hardware Facility and in its current
23 condition and has intentionally refrained from altering the Ace
24 Hardware Facility so that it complies with the accessibility standards.

25 27. Holbrook further alleges that the (continued) presence of barriers at the
26 Ace Hardware Facility is so obvious as to establish Ace Hardware

27 ² Id.; 28 C.F.R. § 36.211(b)

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Defendant's discriminatory intent.³ On information and belief, Holbrook avers that evidence of this discriminatory intent includes Ace Hardware Defendant's refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Ace Hardware Facility; conscientious decision to the architectural layout (as it currently exists) at the Ace Hardware Facility; decision not to remove barriers from the Ace Hardware Facility; and allowance that Ace Hardware Defendant's property continues to exist in its non-compliance state. Holbrook further alleges, on information and belief, that the Ace Hardware Facility is not in the midst of a remodel, and that the barriers present at the Ace Hardware Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.⁴

28. Dollar Tree Store Defendant knew that these elements and areas of the Dollar Tree Store Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Dollar Tree Store Defendant has the financial resources to remove these barriers from the Dollar Tree Store Facility (without much difficulty or expense), and make the Dollar Tree Store Facility accessible to the physically disabled. To date, however, Dollar Tree Store Defendant refuses to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

29. At all relevant times, Dollar Tree Store Defendant has possessed and enjoyed sufficient control and authority to modify the Dollar Tree Store Facility to remove impediments to wheelchair access and to comply with the Americans with Disabilities Act Accessibility

³ E.g., Gunther v. Lin, 144 Cal.App.4th 223, fn.6

⁴ Id.; 28 C.F.R. § 36.211(b)

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Guidelines and Title 24 regulations. Dollar Tree Store Defendant has not removed such impediments and has not modified the Dollar Tree Store Facility to conform to accessibility standards. Dollar Tree Store Defendant has intentionally maintained the Dollar Tree Store Facility and in its current condition and has intentionally refrained from altering the Dollar Tree Store Facility so that it complies with the accessibility standards.

30. Holbrook further alleges that the (continued) presence of barriers at the Dollar Tree Store Facility is so obvious as to establish Dollar Tree Store Defendant's discriminatory intent.⁵ On information and belief, Holbrook avers that evidence of this discriminatory intent includes Dollar Tree Store Defendant's refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Dollar Tree Store Facility; conscientious decision to the architectural layout (as it currently exists) at the Dollar Tree Store Facility; decision not to remove barriers from the Dollar Tree Store Facility; and allowance that Dollar Tree Store Defendant's property continues to exist in its non-compliance state. Holbrook further alleges, on information and belief, that the Dollar Tree Store Facility is not in the midst of a remodel, and that the barriers present at the Dollar Tree Store Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.⁶

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

⁵ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn.6

⁶ Id.; 28 C.F.R. § 36.211(b)

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(Gilroy Shopping Center Common Area Defendant)

31. Holbrook incorporates the allegations contained in paragraphs 1 through 30 for this claim.

32. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

33. Gilroy Shopping Center Common Area Defendant discriminated against Holbrook by denying “full and equal enjoyment” and use of the goods, services, facilities, privileges and accommodations of The Gilroy Shopping Center Common Area during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

34. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” *Id.* § 12181(9).

35. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

36. Here, Holbrook alleges that Gilroy Shopping Center Common Area Defendant can easily remove the architectural barriers at Gilroy Shopping Center Common Area without much difficulty or expense,

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1 and that Gilroy Shopping Center Common Area Defendant violated the
2 ADA by failing to remove those barriers, when it was readily
3 achievable to do so.

4 In the alternative, if it was not “readily achievable” for Gilroy Shopping
5 Center Common Area Defendant to remove the Gilroy Shopping Center
6 Common Area’s barriers, then Gilroy Shopping Center Common Area
7 Defendant violated the ADA by failing to make the required services
8 available through alternative methods, which are readily achievable.

9 Failure to Design and Construct and Accessible Facility

10 37. On information and belief, the Gilroy Shopping Center Common
11 Area’s was designed and constructed (or both) after January 26, 1992 –
12 independently triggering access requirements under Title III or the
13 ADA.

14 38. The ADA also prohibits designing and constructing facilities or first
15 occupancy after January 16, 1993, that aren’t readily accessible to, and
16 usable by, individuals with disabilities when it was structurally
17 practicable to do so. 42 U.S.C. § 12183(a)(1).

18 39. Here, Gilroy Shopping Center Common Area Defendant violated the
19 ADA by designing and constructing (or both) the Gilroy Shopping
20 Center Common Area’s in a manner that was not readily accessible to
21 the physically disabled public – including Holbrook – when it was
22 structurally practical to do so.⁷

23 Failure to Make an Altered Facility Accessible

24 40. On information and belief, the Gilroy Shopping Center Common
25 Area’s was modified after January 26, 1992, independently triggering
26 access requirements under the ADA.

27
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1 41.The ADA also requires that facilities altered in a manner that affects
 2 (or could affect) its usability must be made readily accessible to
 3 individuals with disabilities to the maximum extent feasible. 42
 4 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
 5 primary function also requires adding making the paths of travel,
 6 bathrooms, telephones, and drinking fountains serving that area
 7 accessible to the maximum extent feasible. Id.

8 42.Here, Gilroy Shopping Center Common Area Defendant altered The
 9 Gilroy Shopping Center Common Area's in a manner that violated the
 10 ADA and was not readily accessible to the physically disabled public –
 11 including Holbrook – to the maximum extent feasible.

12 Failure to Modify Existing Policies and Procedures

13 43.The ADA also requires reasonable modifications in policies, practices,
 14 or procedures, when necessary to afford such goods, services,
 15 facilities, or accommodations to individuals with disabilities, unless
 16 the entity can demonstrate that making such modifications would
 17 fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

18 44.Here, Gilroy Shopping Center Common Area Defendant violated the
 19 ADA by failing to make reasonable modifications in policies,
 20 practices, or procedures at the Gilroy Shopping Center Common
 21 Areas, when these modifications were necessary to afford (and would
 22 not fundamentally alter the nature of) these goods, services, facilities,
 23 or accommodations.

24 45.Holbrook seeks all relief available under the ADA (i.e., injunctive
 25 relief, attorney fees, costs, legal expense) for these aforementioned
 26 violations. 42 U.S.C. § 12205.

27
 28 ⁷ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing
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1 46.Holbrook also seeks a finding from this Court (i.e., declaratory relief)
2 that Gilroy Shopping Center Common Area Defendant violated the
3 ADA in order to pursue damages under California's Unruh Civil
4 Rights Act or Disabled Persons Act.

5 VII. SECOND CLAIM

6 **Disabled Persons Act**

7 (Gilroy Shopping Center Common Area Defendant)

8 47.Holbrook incorporates the allegations contained in paragraphs 1
9 through 30 for this claim.

10 48.California Civil Code § 54 states, in part, that: Individuals with
11 disabilities have the same right as the general public to the full and free
12 use of the streets, sidewalks, walkways, public buildings and facilities,
13 and other public places.

14 49.California Civil Code § 54.1 also states, in part, that: Individuals with
15 disabilities shall be entitled to full and equal access to
16 accommodations, facilities, telephone facilities, places of public
17 accommodation, and other places to which the general public is
18 invited.

19 50.Both sections specifically incorporate (by reference) and individual's
20 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

21 51.Here, Gilroy Shopping Center Common Area Defendant discriminated
22 against the physically disabled public – including Holbrook – by
23 denying them full and equal access to the Gilroy Shopping Center
24 Common Area. Gilroy Shopping Center Common Area Defendant
25 also violated Holbrook's rights under the ADA, and therefore,
26

27
28 this action as a private attorney general under either state or federal statutes.
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1 infringed upon or violated (or both) Holbrook's rights under the
2 Disabled Persons Act.

3 52. For each offense of the Disabled Persons Act, Holbrook seeks actual
4 damages (both general and special damages), statutory minimum
5 damages of one thousand dollars (\$1,000), declaratory relief, and any
6 other remedy available under California Civil Code § 54.3.

7 53. He also seeks to enjoin Gilroy Shopping Center Common Area
8 Defendant from violating the Disabled Persons Act (and ADA) under
9 California Civil Code § 55, and to recover reasonable attorneys' fees
10 and incurred under California Civil Code §§ 54.3 and 55.

11 **VIII. THIRD CLAIM**

12 **Unruh Civil Rights Act**

13 (Gilroy Shopping Center Common Area Defendant)

14 54. Holbrook incorporates the allegations contained in paragraphs 1
15 through 30 for this claim.

16 55. California Civil Code § 51 states, in part, that: All persons within the
17 jurisdiction of this state are entitled to the full and equal
18 accommodations, advantages, facilities, privileges, or services in all
19 business establishments of every kind whatsoever.

20 56. California Civil Code § 51.5 also states, in part that: No business
21 establishment of any kind whatsoever shall discriminate against any
22 person in this state because of the disability of the person.

23 57. California Civil Code § 51(f) specifically incorporates (by reference)
24 an individual's rights under the ADA into the Unruh Act.

25 58. Gilroy Shopping Center Common Area Defendant aforementioned acts
26 and omissions denied the physically disabled public – including
27 Holbrook – full and equal accommodations, advantages, facilities,

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privileges and services in a business establishment (because of their physical disability).

59. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Holbrook by violating the Unruh Act.

60. Holbrook was damaged by Gilroy Shopping Center Common Area Defendant wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

61. Holbrook also seeks to enjoin Gilroy Shopping Center Common Area Defendant from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

(Gilroy Shopping Center Common Area Defendant)

62. Holbrook incorporates the allegations contained in paragraphs 1 through 30 of this claim.

63. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (build with private funds) shall adhere to the provisions of Government Code §4450.

64. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

65. Holbrook alleges the Gilroy Shopping Center Common Area is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code §

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4450 (or both), and that the Gilroy Shopping Center Common Area was not exempt under Health and Safety Code § 19956.

66. Gilroy Shopping Center Common Area Defendant's non-compliance with these requirements at the Gilroy Shopping Center Common Area aggrieved (or potentially aggrieved) Holbrook and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

X. FIFTH CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(Ace Hardware Defendant)

67. Holbrook incorporates the allegations contained in paragraphs 1 through 30 for this claim.

68. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

69. Ace Hardware Defendant discriminated against Holbrook by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges and accommodations of the Ace Hardware Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

70. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term

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1 “readily achievable” is defined as “easily accomplishable and able to
2 be carried out without much difficulty or expense.” *Id.* § 12181(9).

3 71. When an entity can demonstrate that removal of a barrier is not readily
4 achievable, a failure to make goods, services, facilities, or
5 accommodations available through alternative methods is also
6 specifically prohibited if these methods are readily achievable. *Id.* §
7 12182(b)(2)(A)(v).

8 72. Here, Holbrook alleges that Ace Hardware Defendant can easily
9 remove the architectural barriers at Ace Hardware Facility without
10 much difficulty or expense, and that Ace Hardware Defendant violated
11 the ADA by failing to remove those barriers, when it was readily
12 achievable to do so.

13 73. In the alternative, if it was not “readily achievable” for Ace Hardware
14 Defendant to remove the Ace Hardware Facility’s barriers, then Ace
15 Hardware Defendant violated the ADA by failing to make the required
16 services available through alternative methods, which are readily
17 achievable.

18 Failure to Design and Construct and Accessible Facility

19 74. On information and belief, the Ace Hardware Facility was designed
20 and constructed (or both) after January 26, 1992 – independently
21 triggering access requirements under Title III or the ADA.

22 75. The ADA also prohibits designing and constructing facilities or first
23 occupancy after January 16, 1993, that aren’t readily accessible to, and
24 usable by, individuals with disabilities when it was structurally
25 practicable to do so. 42 U.S.C. § 12183(a)(1).

26 76. Here, Ace Hardware Defendant violated the ADA by designing and
27 constructing (or both) the Ace Hardware Facility in a manner that was

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1 not readily accessible to the physically disabled public – including
2 Holbrook – when it was structurally practical to do so.⁸

3 Failure to Make an Altered Facility Accessible

4 77. On information and belief, the Ace Hardware Facility was modified
5 after January 26, 1992, independently triggering access requirements
6 under the ADA.

7 78. The ADA also requires that facilities altered in a manner that affects
8 (or could affect) its usability must be made readily accessible to
9 individuals with disabilities to the maximum extent feasible. 42
10 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
11 primary function also requires adding making the paths of travel,
12 bathrooms, telephones, and drinking fountains serving that area
13 accessible to the maximum extent feasible. Id.

14 79. Here, Ace Hardware Defendant altered the Ace Hardware Facility in a
15 manner that violated the ADA and was not readily accessible to the
16 physically disabled public – including Holbrook – to the maximum
17 extent feasible.

18 Failure to Modify Existing Policies and Procedures

19 80. The ADA also requires reasonable modifications in policies, practices,
20 or procedures, when necessary to afford such goods, services,
21 facilities, or accommodations to individuals with disabilities, unless
22 the entity can demonstrate that making such modifications would
23 fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

24 81. Here, Ace Hardware Defendant violated the ADA by failing to make
25 reasonable modifications in policies, practices, or procedures at the
26 Ace Hardware Facility, when these modifications were necessary to

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28 ⁸ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing
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1 afford (and would not fundamentally alter the nature of) these goods,
2 services, facilities, or accommodations.

3 82.Holbrook seeks all relief available under the ADA (i.e., injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned
5 violations. 42 U.S.C. § 12205.

6 83.Holbrook also seeks a finding from this Court (i.e., declaratory relief)
7 that Ace Hardware Defendant violated the ADA in order to pursue
8 damages under California's Unruh Civil Rights Act or Disabled
9 Persons Act.

10 XI. SIXTH CLAIM

11 Disabled Persons Act

12 (Ace Hardware Defendant)

13 84.Holbrook incorporates the allegations contained in paragraphs 1
14 through 30 for this claim.

15 85.California Civil Code § 54 states, in part, that: Individuals with
16 disabilities have the same right as the general public to the full and free
17 use of the streets, sidewalks, walkways, public buildings and facilities,
18 and other public places.

19 86.California Civil Code § 54.1 also states, in part, that: Individuals with
20 disabilities shall be entitled to full and equal access to
21 accommodations, facilities, telephone facilities, places of public
22 accommodation, and other places to which the general public is
23 invited.

24 87.Both sections specifically incorporate (by reference) and individual's
25 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

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27
28 this action as a private attorney general under either state or federal statutes.
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1 88. Here, Ace Hardware Defendant discriminated against the physically
2 disabled public – including Holbrook – by denying them full and equal
3 access to the Ace Hardware Facility. Ace Hardware Defendant also
4 violated Holbrook's rights under the ADA, and therefore, infringed
5 upon or violated (or both) Holbrook's rights under the Disabled
6 Persons Act.

7 89. For each offense of the Disabled Persons Act, Holbrook seeks actual
8 damages (both general and special damages), statutory minimum
9 damages of one thousand dollars (\$1,000), declaratory relief, and any
10 other remedy available under California Civil Code § 54.3.

11 90. He also seeks to enjoin Ace Hardware Defendant from violating the
12 Disabled Persons Act (and ADA) under California Civil Code § 55,
13 and to recover reasonable attorneys' fees and incurred under California
14 Civil Code §§ 54.3 and 55.

15 XII. SEVENTH CLAIM

16 Unruh Civil Rights Act

17 (Ace Hardware Defendant)

18 91. Holbrook incorporates the allegations contained in paragraphs 1
19 through 30 for this claim.

20 92. California Civil Code § 51 states, in part, that: All persons within the
21 jurisdiction of this state are entitled to the full and equal
22 accommodations, advantages, facilities, privileges, or services in all
23 business establishments of every kind whatsoever.

24 93. California Civil Code § 51.5 also states, in part that: No business
25 establishment of any kind whatsoever shall discriminate against any
26 person in this state because of the disability of the person.

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1 94. California Civil Code § 51(f) specifically incorporates (by reference)
2 an individual's rights under the ADA into the Unruh Act.

3 95. Ace Hardware Defendant aforementioned acts and omissions denied
4 the physically disabled public – including Holbrook – full and equal
5 accommodations, advantages, facilities, privileges and services in a
6 business establishment (because of their physical disability).

7 96. These acts and omissions (including the ones that violate the ADA)
8 denied, aided or incited a denial, or discriminated against Holbrook by
9 violating the Unruh Act.

10 97. Holbrook was damaged by Ace Hardware Defendant wrongful
11 conduct, and seeks statutory minimum damages of four thousand
12 dollars (\$4,000) for each offense.

13 98. Holbrook also seeks to enjoin Ace Hardware Defendant from violating
14 the Unruh Act (and ADA), and recover reasonable attorneys' fees and
15 costs incurred under California Civil Code § 52(a).

16 **XIII. EIGHTH CLAIM**

17 **Denial of Full and Equal Access to Public Facilities**

18 (Ace Hardware Defendant)

19 99. Holbrook incorporates the allegations contained in paragraphs 1
20 through 30 of this claim.

21 100. Health and Safety Code § 19955(a) states, in part, that: California
22 public accommodations or facilities (built with private funds) shall
23 adhere to the provisions of Government Code § 4450.

24 101. Health and Safety Code § 19959 states, in part, that: Every existing
25 (non-exempt) public accommodation constructed prior to July 1, 1970,
26 which is altered or structurally repaired, is required to comply with this
27 chapter.

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102. Holbrook alleges the Ace Hardware Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Ace Hardware Facility was not exempt under Health and Safety Code § 19956.

103. Ace Hardware Defendant's non-compliance with these requirements at the Ace Hardware Facility aggrieved (or potentially aggrieved) Holbrook and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XIV. NINTH CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(Dollar Tree Store Defendant)

104. Holbrook incorporates the allegations contained in paragraphs 1 through 30 for this claim.

105. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

106. Dollar Tree Store Defendant discriminated against Holbrook by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges and accommodations of the Dollar Tree Store Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

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1 107. The ADA specifically prohibits failing to remove architectural
2 barriers, which are structural in nature, in existing facilities where such
3 removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The
4 term “readily achievable” is defined as “easily accomplishable and
5 able to be carried out without much difficulty or expense.” *Id.* §
6 12181(9).

7 108. When an entity can demonstrate that removal of a barrier is not
8 readily achievable, a failure to make goods, services, facilities, or
9 accommodations available through alternative methods is also
10 specifically prohibited if these methods are readily achievable. *Id.* §
11 12182(b)(2)(A)(v).

12 109. Here, Holbrook alleges that Dollar Tree Store Defendant can easily
13 remove the architectural barriers at Dollar Tree Store Facility without
14 much difficulty or expense, and that Dollar Tree Store Defendant
15 violated the ADA by failing to remove those barriers, when it was
16 readily achievable to do so.

17 110. In the alternative, if it was not “readily achievable” for Dollar Tree
18 Store Defendant to remove the Dollar Tree Store Facility’s barriers,
19 then Dollar Tree Store Defendant violated the ADA by failing to make
20 the required services available through alternative methods, which are
21 readily achievable.

22 Failure to Design and Construct and Accessible Facility

23 111. On information and belief, the Dollar Tree Store Facility was
24 designed and constructed (or both) after January 26, 1992 –
25 independently triggering access requirements under Title III or the
26 ADA.

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112. The ADA also prohibits designing and constructing facilities or first occupancy after January 16, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

113. Here, Dollar Tree Store Defendant violated the ADA by designing and constructing (or both) the Dollar Tree Store Facility in a manner that was not readily accessible to the physically disabled public – including Holbrook – when it was structurally practical to do so.⁹

Failure to Make an Altered Facility Accessible

114. On information and belief, the Dollar Tree Store Facility was modified after January 26, 1992, independently triggering access requirements under the ADA.

115. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

116. Here, Dollar Tree Store Defendant altered the Dollar Tree Store Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Holbrook – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

117. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods,

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services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

118. Here, Dollar Tree Store Defendant violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Dollar Tree Store Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

119. Holbrook seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

120. Holbrook also seeks a finding from this Court (i.e., declaratory relief) that Dollar Tree Store Defendant violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

XV. TENTH CLAIM

Disabled Persons Act

(Dollar Tree Store Defendant)

121. Holbrook incorporates the allegations contained in paragraphs 1 through 30 for this claim.

122. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

⁹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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1 123. California Civil Code § 54.1 also states, in part, that: Individuals
2 with disabilities shall be entitled to full and equal access to
3 accommodations, facilities, telephone facilities, places of public
4 accommodation, and other places to which the general public is
5 invited.

6 124. Both sections specifically incorporate (by reference) and
7 individual's rights under the ADA. See Civil Code §§ 54(c) and
8 54.1(d).

9 125. Here, Dollar Tree Store Defendant discriminated against the
10 physically disabled public – including Holbrook – by denying them
11 full and equal access to the Dollar Tree Store Facility. Dollar Tree
12 Store Defendant also violated Holbrook's rights under the ADA, and
13 therefore, infringed upon or violated (or both) Holbrook's rights under
14 the Disabled Persons Act.

15 126. For each offense of the Disabled Persons Act, Holbrook seeks
16 actual damages (both general and special damages), statutory
17 minimum damages of one thousand dollars (\$1,000), declaratory relief,
18 and any other remedy available under California Civil Code § 54.3.

19 127. He also seeks to enjoin Dollar Tree Store Defendant from violating
20 the Disabled Persons Act (and ADA) under California Civil Code § 55,
21 and to recover reasonable attorneys' fees and incurred under California
22 Civil Code §§ 54.3 and 55.

23 **XVI. ELEVENTH CLAIM**

24 **Unruh Civil Rights Act**

25 **(Dollar Tree Store Defendant)**

26 128. Holbrook incorporates the allegations contained in paragraphs 1
27 through 30 for this claim.

28 *Holbrook v. Ace Hardware Corporation, et al.*

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129. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

130. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

131. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

132. Dollar Tree Store Defendant aforementioned acts and omissions denied the physically disabled public – including Holbrook – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

133. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Holbrook by violating the Unruh Act.

134. Holbrook was damaged by Dollar Tree Store Defendant wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

135. Holbrook also seeks to enjoin Dollar Tree Store Defendant from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

XVII. TWELVTH CLAIM

Denial of Full and Equal Access to Public Facilities

(Dollar Tree Store Defendant)

136. Holbrook incorporates the allegations contained in paragraphs 1 through 30 of this claim.

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1 137. Health and Safety Code § 19955(a) states, in part, that: California
2 public accommodations or facilities (build with private funds) shall
3 adhere to the provisions of Government Code §4450.

4 138. Health and Safety Code § 19959 states, in part, that: Every existing
5 (non-exempt) public accommodation constructed prior to July 1, 1970,
6 which is altered or structurally repaired, is required to comply with this
7 chapter.

8 139. Holbrook alleges the Dollar Tree Store Facility is a public
9 accommodation constructed, altered, or repaired in a manner that violates
10 Part 5.5 of the Health and Safety Code or Government Code § 4450 (or
11 both), and that the Dollar Tree Store Facility was not exempt under
12 Health and Safety Code § 19956.

13 140. Dollar Tree Store Defendant's non-compliance with these
14 requirements at the Dollar Tree Store Facility aggrieved (or potentially
15 aggrieved) Holbrook and other persons with physical disabilities.
16 Accordingly, he seeks injunctive relief and attorney fees pursuant to
17 Health and Safety Code § 19953.

18 XVIII. PRAYER FOR RELIEF

19 WHEREFORE, Holbrook prays judgment against Gilroy Shopping Center
20 Common Area Defendant for:

- 21 1. Injunctive relief, preventive relief, or any other relief the Court deems
22 proper.
- 23 2. Declaratory relief that Gilroy Shopping Center Common Area Defendant
24 violated the ADA for the purposes of Unruh Act or Disabled Persons Act
25 damages.
- 26 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
27 California Civil Code (but not both) according to proof.

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4. Attorneys' fees, litigation expense, and costs of suit.¹⁰
5. Interest at the legal rate from the date of the filing of this action.

XIX. PRAYER FOR RELIEF

WHEREFORE, Holbrook prays judgment against Ace Hardware Defendant for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Ace Hardware Defendant violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys'-fees, litigation expense, and costs of suit.¹¹
5. Interest at the legal rate from the date of the filing of this action.

XX. PRAYER FOR RELIEF

WHEREFORE, Holbrook prays judgment against Dollar Tree Store Defendant for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Dollar Tree Store Defendant violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expense, and costs of suit.¹²
5. Interest at the legal rate from the date of the filing of this action.

¹⁰ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

¹¹ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

¹² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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Plaintiff's Complaint

1 Dated: November 18, 2010

/s/ K. Randolph Moore

2 K. Randolph Moore

3 Attorney for Plaintiff

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